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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of) MM Docket No. 96-70
COLLEGE OF SOUTHERN IDAHO)
Licensee of Station KEZJ(AM))
Twin Falls, Idaho)
Order to Show Cause Why the)
License for Station KEZJ(AM))
Twin Falls, Idaho, Should)
Not Be Revoked)

DOCKET FILE COPY ORIGINAL

To: Administrative Law Judge
Arthur Steinberg

MASS MEDIA BUREAU'S COMMENTS ON
MOTION FOR SUMMARY DECISION

1. On September 9, 1996, the College of Southern Idaho ("the College") filed a motion for summary decision. The College filed a supplement to its motion on October 2, 1996. The Mass Media Bureau hereby offers its comments in support of the College's motion as supplemented.

2. By Order to Show Cause and Hearing Designation Order, DA 96-583, released April 16, 1996, the College was set for hearing on issues to determine whether it had the capability and intent to expeditiously resume broadcast operations of KEZJ(AM) consistent with the Commission's Rules and whether it had violated Sections 73.1740 and 73.1750 of the Commission's Rules. The Hearing Designation Order noted that the Commission's records indicated that KEZJ(AM) had been off the air since December 16, 1993, and that the special temporary authority permitting the

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station to remain silent expired February 2, 1996.

3. The College now seeks summary decision in its favor of the specified issues. In support of its motion, the College asserts that Station KEZJ(AM) was donated to the College on December 16, 1993. The station was silent at the time. The College, which has a student body of nearly 7,000, accepted the gift and began developing a "Mass Communications Program." According to the College, the process of initiating an academic program in the State of Idaho is complicated and time intensive, requiring ultimate approval of the program by the State Board of Education. The College admits that, after a series of communications to the Commission and requests for extension of time, it failed to submit a request for an extension of time to remain silent following the expiration of its latest silent authority on February 2, 1996. The College submits that this failure was inadvertent.

4. The College further contends that it is "fully committed to the creation of the Mass Communications Program." In support of this contention, the College submits a statement, under penalty of perjury, by its Vice President of Instruction, Gerald L. Beck, who attests that the College has acquired the "programming and equipment to bring the station on line...." College Ex. C.1. The College states it has submitted all necessary documentation and is awaiting approval of its Mass

Communications Program by the Idaho State Board of Education.¹

5. The College contends that it currently operates with an annual budget of nearly 17 million dollars and is in good financial condition. In support of this contention, it submits an audited financial statement for the year ended June 30, 1995. College Ex. D.2. The College further contends that it is fully committed to the maintenance and operational support of KEZJ(AM). In support of this contention, it submits the statement under penalty of perjury of its Dean of Finance, who states that the College "is prepared to commit necessary funding to operate and maintain the KEZJ-AM radio station." College Ex. D.3.

6. Since the issuance of the Order to Show Cause, the College states that it has; (1) entered into a contract with B&B Broadcasting, whereby the College agrees to lease the station's antenna site on a month-by-month basis; (2) established a telephone link between the station's studio and its antenna site; (3) entered into a contract with Boise State Radio for technical advice and support; (4) obtained permission to retransmit programming originated by Boise State University Station KBSU-AM;

¹ By letter dated October 4, 1996, the College's Dean of Information Technology, Ken Campbell, informed undersigned counsel that the Idaho State Board of Education, at its September 19-20, 1996, meeting, approved the College's proposal for the development of a Mass Communications Program. A copy of the minutes of the Idaho State Board of Education meeting approving the program was also provided. See attached. The Bureau requests that the Presiding Judge take Judicial Notice of this action by the Idaho State Board of Education.

(5) purchased and installed VRC remote controlled equipment at a cost of \$3,499; and (6) resumed broadcast operations of KEZJ(AM) on September 5, 1996, with 24 hour per day programming.² In addition, the College states that it has established an Information Technology department to oversee the operational requirements of the station. Finally, the College states that it has "undertaken the financial burden of these actions, with no certainty of external funding, because it is committed to the provision of a broadcast technology component in its educational offerings."

7. Pursuant to Section 1.251 of the Commission's Rules, in order to warrant summary decision, a party must show that there is no genuine issue of fact for determination at the hearing. 47 C. F. R. Sec. 1.251. To sustain a motion for summary decision, it must be established that "the truth is clear," that "the basic facts are undisputed," and that "the parties are not in disagreement regarding material factual inferences that may be properly drawn from such facts." Big Country Radio, Inc., 50 FCC 2d 967 (Rev. Bd. 1975).

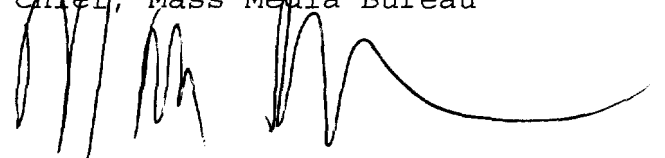
8. In the instant case, although it appears that the College violated Sections 73.1740 and 73.1750 of the Commission's Rules, summary decision on the dispositive issue in favor of the

² The College explains that it took longer than anticipated to return KEZJ(AM) to the air due to technical problems related to the equipment's two year down time.

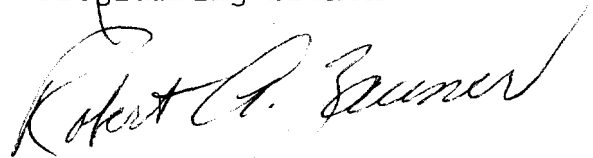
licensee is appropriate. The licensee here is a state college which relies on public funding to support its educational goals and course offerings. Although the station was off the air, the College has returned it to operational status. Moreover, the information received from the College establishes that the College is committed to maintaining the station's operational status in the future. The College has spent its resources in returning the station to the air and has developed a communications curriculum that is based, in part, on the availability of the station as a teaching tool. The College has supplied evidence that it is in good financial condition and is prepared to supply the funding necessary to operate and maintain the station. Finally, and most importantly, the College has now received approval for its Mass Communications Program from the Idaho State Board of Education, thus, assuring the station's operation for the foreseeable future. Thus, no question remains as to the licensee's "capability and intent" to return KEZJ(AM) to the air.

9. Based on the foregoing, the Bureau supports the College's Motion for Summary Decision.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau



Norman Goldstein
Chief, Complaints and Political
Programming Branch



Robert A. Zauner
Attorney
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October 8, 1996



COLLEGE OF
SOUTHERN
IDAHO

ATTACHMENT

October 4, 1996

Mr. Bob Zauner
Attorney, Mass Media Bureau
2025 M Street N.W., Room 8202-E
Washington, DC 20554

Mr. Bob Zauner,

Subsequent to your call, I have learned that the Idaho State Board of Education approved the College of Southern Idaho's proposal for the development of a Mass Communications Program at its September 19-20, 1996 meeting.

Attached are the minutes of the Idaho State Board of Education Academic Affairs and Program Committee meeting.

Sincerely,

Ken Campbell
Dean of Information Technology

Unapproved Minutes

ACADEMIC AFFAIRS AND PROGRAM COMMITTEE MEETING

University of Idaho

Moscow, Idaho

September 19, 1996

2:30 p.m. - 4:50 p.m.

Appaloosa Room

PRESENT: Tom Dillon, SBOE Mike Rush, SDVE
Daryl Jones, BSU Jerry Beck, CSI
George Simmons, UI Rita Rice Flaningam, LCSC
Jerry Gee, NIC Jonathan Lawson, ISU
Lynn Humphrey, OSBE

EXCUSED: Judy Meyer, SBOE Robin Dodson, OSBE

Dr. Dillon opened the meeting by welcoming all those in attendance, especially Dr. Rita Rice Flaningam, the new Provost/Academic Vice President of Lewis Clark State College.

3.1 MINUTES

Minutes of the Academic Affairs and Program Committee Meeting of June 13, 1996.

ACTION: The minutes of the Academic Affairs and Program Committee meeting held on June 13, 1996 were approved as written.

3.2 INSTITUTIONAL/AGENCY CONSENT AGENDA ITEMS: None

3.3 COMPLIANCE REQUEST DISCUSSION/ACTION ITEMS: None

3.4 NEW PROGRAMS: Notice of Intent and Full Proposals: (Items 3.4a-c)

a. Notice of Intent: Associate of Arts, Mass Communications – CSI (Item 3.4a)

ACTION: Dr. Dillon approved the request and instructed CSI to develop a Full Proposal for consideration and action at a future meeting.

CERTIFICATE OF SERVICE

Natalie Moses, a secretary in the Hearing Branch, Mass Media Bureau certifies that she has on this 8th day of October 1996, sent by regular United States mail, U.S. Government frank, copies of the foregoing "**Mass Media Bureau's Comments on Motion for Summary Decision**" to:

Ken Campbell
Dean of Information Technology
College of Southern Idaho
315 Falls Avenue
Twin Falls, ID 83301



Natalie Moses